

Exhibit
C

Robert McVey
January 5, 2005

VOLUME I - 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 04-10374MGY

NORTH AMERICAN SPECIALTY
INSURANCE COMPANY,
Plaintiff,

vs.

MARY & JOSEPHINE CORP. and
MATTEO RUSSO,
Defendants.

DEPOSITION OF ROBERT McVEY, a witness

called on behalf of the Defendant, Mary &
Josephine Corp., pursuant to the Federal Rules
of Civil Procedure before Jo Anne M. Shields,
Professional Shorthand Reporter and Notary
Public in and for the Commonwealth of
Massachusetts, at the Law Offices of Joseph G.
Abramovitz, P.C., 858 Washington Street,
Dedham, Massachusetts, on Wednesday, January 5,
2005, commencing at 10:00 a.m.

DUNN & GOUDREAU COURT REPORTING SERVICE, INC.
One State Street
Boston, Massachusetts 02109
Telephone (617) 742-6900

North American Specialty Insurance Company
vs. Mary & Josephine Corp. and Matteo Russo

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ALSO PRESENT:
William J. Scola

STIPULATIONS

It is stipulated by and between
counsel for the respective parties that the
deposition transcript is to be read and signed
by the deponent under the pains and penalties
of perjury; and that the sealing and filing
thereof are waived; and that all objections,
except as to form, and motions to strike are
reserved to the time of trial.

PROCEEDINGS

MR. PETTINGELL: All right. Good morning,
everybody. We're here this morning on a
Rule 30(b)(6) deposition of North American
Insurance Company. And, I guess, since today
is January 5th, we'll use the remotice of the
deposition dated January 5th for purposes of
what we're going to talk about.

And I understand, Mr. Langer, that you've
brought three people with you today to respond
to the various areas of inquiry. So I wonder
if we could first mark a copy of the January
5th deposition notice as an exhibit. I guess
that would be Exhibit 1.

Robert McVey
January 5, 2005

(Notice of Deposition marked as McVey Exhibit No. 1.)

MR. PETTINGELL: Okay. So referring to Exhibit 1, I wonder if you could identify who you've brought and who's going to be responsive to which allega- -- which paragraphs.

MR. LANGER: Present on behalf or as designees for North American Specialty Insurance Company are William Scola, Robert McVey, and Lynanne Houde.

With regard to Paragraph 1 of the notice, which asks for information regarding the recitation in Paragraph 14 of the Complaint for Declaratory Judgment, that, "On October 3rd, 2003, Defendant Russo, on behalf of Defendant M&J, called OMIA and advised that the Fishing Vessel MARY & JOSEPHINE had not been fishing since May 2003," both Ms. Houde and Mr. McVey will testify regarding conversations with Mr. Russo.

Paragraph 2 of the notice asked that we produce -- that NAS produce a witness regarding the allegations in Paragraph 15 of the Complaint for Declaratory Judgment, that,

"Defendant Russo specifically requested that the Vessel be deemed to have had 'port risk' coverage starting May 1, 2003 rather than full operational coverage and stated that Defendants did not want any crew protection and indemnity coverage during the period that the Vessel was not fishing." Mr. McVey will respond to that.

Paragraph 3 asks for a witness regarding Paragraph 16 of the Complaint for Declaratory Judgment, to wit, "OMIA immediately notified NAS of Defendant's request and procured a credit of \$1,425.00 for the initial level of P&I coverage and an additional credit of \$519.00 for the excess P&I coverage. Such credit was provided for the P&I coverage for 3 1/2 crewman originally covered by the policy during the policy year August 13, 2002 through August 13, 2003." Ms. Houde will respond to that.

Paragraph 14 -- excuse me -- 4 asks that NAS produce a witness to testify regarding the allegations in Paragraph 17 of the Complaint for Declaratory Judgment, to wit, "It was understood and agreed by the parties that NAS

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vs. Mary & Josephine Corp. and Matteo Rusi

would continue to provide port risk only coverage with no coverage for any crewmen until Defendants advised Vessel had returned to active fishing, at which point Plaintiff would reinstate full operational coverage.

"Additional credits would accrue to M&J during this period of port risk coverage, which credits would be applied either upon the Vessel's return to full operational coverage or the end of the policy year on August 13th, 2004, whichever occurred first." That would be both Mr. McVey and Ms. Houde.

Paragraph 5 asked that NAS provide a witness regarding allegations in Paragraph 18 of the Complaint for Declaratory Judgment, to wit, "On October 3, 2003 and again on November 21, 2003, OMIA informed Defendants in writing that the Vessel was covered by port risk coverage only and that when the Vessel returned to full fishing operations, notice should be provided to OMIA so that policy could be amended appropriately." Ms. Houde will respond to those issues.

And, finally, Paragraph 6, "What is meant

by 'port risk coverage' as same was intended by either NAS or OMIA during calendar year 2003," Mr. Scola will respond to that.

MR. PETTINGELL: All right. Fine. Thank you. I would propose that we start with Mr. McVey, followed by Ms. Houde, and then Mr. Scola. So with that, I would ask that -- I would -- I -- I think we're going to have three separate depositions.

I understand that it's a 30(b)(6) notice of the insurance carrier. But, obviously, the people you're producing also have individual knowledge that is going to be binding on them individually, as well as areas that are binding on the company. So I -- I think we need three different --

MR. LANGER: I understand you're going to swear each witness.

MR. PETTINGELL: Right.

MR. LANGER: But it is NAS that's been noticed --

MR. PETTINGELL: I understand.

MR. LANGER: -- for this deposition. And that's why we're here. I don't represent Ocean

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January 5, 2005

1 Marine Insurance Agency. So I can't represent
2 that this is a deposition of Mr. McVey or Ocean
3 Marine Insurance Agency because they may want
4 to retain their own counsel and do whatever
5 they want to do.
6 MR. PETTINGELL: I understand.
7 MR. LANGER: So --
8 MR. PETTINGELL: What we're saying is,
9 there's going to be three separate --
10 MR. LANGER: There'll be three -- I
11 understand there'll be three --
12 MR. PETTINGELL: -- witnesses deposed.
13 MR. LANGER: -- three separate witnesses
14 appearing on behalf of MAS in response to the
15 notice of deposition.
16 MR. PETTINGELL: Fine.
17 MR. ABRONOVITZ: Let's go off the record
18 for one second.
19 (A brief discussion was held off the
20 record.)
21 ROBERT McVEY, a witness called
22 for examination by counsel for the Defendant,
23 Mary & Josephine Corp., his identity having
24 been stipulated to by all attorneys and duly

1 Q. And you understand, Mr. McVey, that you are
2 here to testify as a designate of North
3 American Insurance Company concerning certain
4 areas that have previously been identified in
5 the deposition notice?
6 A. Yes.
7 Q. Fine. And I'm going to -- well, let me ask
8 you, sir, who are you employed by?
9 A. Ocean Marine Insurance Agency.
10 Q. And, for ease of reference, can we just refer
11 to Ocean Marine Insurance Agency from this
12 point forward as OMI?
13 A. Yes.
14 Q. If I say that, you'll know who I mean and ...
15 A. Yes.
16 Q. As a shorthand. What is -- first of all,
17 what -- what does OMI do?
18 A. OMI do is an insurance agency that procures
19 insurance mostly for commercial fishing boats.
20 Q. And where are they located?
21 A. We have our main offices in Warwick, Rhode
22 Island. We have an office in Point Judith,
23 Rhode Island. We have an office in Fairhaven,
24 Rhode Island. And we have a -- a satellite

1 sworn by the Notary Public, was examined and
2 testified as follows:
3 ***
4 DIRECT EXAMINATION
5 BY MR. PETTINGELL:
6 MR. PETTINGELL: Off the record for a
7 second.
8 (A brief discussion was held off the
9 record.)
10 MR. PETTINGELL: I understand that
11 Mr. McVey does not have, with him, a photo ID.
12 However, he is known to us. And I think all
13 parties are prepared to stipulate that Mr.
14 McVey is who he claims to be. Is that agreed?
15 MR. ABRONOVITZ: Sure.
16 MR. LANGER: I -- I will stipulate that he
17 is Robert McVey.
18 MR. PETTINGELL: All right.
19 Q. Sir, could you please state your name?
20 A. My name is Robert McVey.
21 Q. And your business address? Well, your home
22 address, if you --
23 A. My home address is 140 Kettle Pond Drive.
24 That's in South Kingstown, Rhode Island 02879.

1 office in Maine.
2 Q. And, if you know, are you aware of the
3 relationship between OMI and North American
4 Insurance Company?
5 A. Vaguely.
6 MR. LANGER: Let -- let me just interject
7 at this point. He can answer. But there are
8 six very specific categories that we were
9 supposed to produce people --
10 MR. PETTINGELL: And you have.
11 MR. LANGER: -- for. They -- one of those
12 categories was not the relationship between
13 OMI and MAS or MAS at all. It was very
14 specific, factual allegations that were set
15 forth in the Complaint. So I'll let him
16 testify, but I -- I am going to hold everybody
17 fairly closely to the areas that we're
18 designating.
19 MR. PETTINGELL: Well, off the record.
20 (A brief discussion was held off the
21 record.)
22 MR. PETTINGELL: Mr. Langer and I have had
23 a -- a discussion concerning questions that go
24 beyond the scope of the six paragraphs listed

Robert McVey
September 13, 2005

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO: 04-10374MGV

NORTH AMERICAN SPECIALTY
INSURANCE COMPANY,
Plaintiff,
vs.
MARY & JOSEPHINE CORP. and
MATTEO RUSSO,
Defendants.

CONTINUED DEPOSITION OF ROBERT McVEY, a

witness called on behalf of the Defendant, Mary
& Josephine Corp., pursuant to the Federal
Rules of Civil Procedure before Jo Anne M.
Shields, Professional Shorthand Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Law Offices of Joseph G.
Abramovitz, P.C., 858 Washington Street,
Dedham, Massachusetts, on Tuesday, September 13,
2005, commencing at 10:08 a.m.

DUNN & GOUDREAU COURT REPORTING SERVICE, INC.
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Telephone (617) 742-6900

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ALSO PRESENT:

William J. Scola

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

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STIPULATIONS

It is stipulated by and between counsel for the respective parties that the deposition transcript is to be read and signed by the deponent under the pains and penalties of perjury; and that the sealing and filing thereof are waived; and that all objections, except as to form, and motions to strike are reserved to the time of trial.

PROCEDINGS

MR. PETTINGELL: All right. Well, we're here this morning as a continuation of the 30(b)(6) deposition of American -- North American Specialty Insurance Company. Day 1 was on January 5th of this year. And we're continuing with the deposition of Robert McVey. And we -- we're all in agreement that he is Mr. McVey, who's known to us. And I understand he's still under oath.

MR. PETTINGELL: Let's go off the record for a second.

(A brief discussion was held off the record.)

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you made a phone call to Mr. Russo at the hospital where he was undergoing treatment following his injury and advised him there was no coverage because he was an owner?

A. That's not true.

Q. That's not true? Did you have a telephone conversation with him at the hospital?

A. Yes. I did.

Q. And did the topic of whether or not there was coverage for his injuries ever come up during that conversation?

A. Yes. It did.

Q. Okay. And what was the gist of the conversation you had with Mr. Russo?

A. I called Mr. Russo up to see how he was doing, and he asked if there was coverage. And I said we were working on it. At this time, we didn't know.

Q. Okay. You had no discussion with him that you recollect where the issue of whether or not he was an owner of the vessel came up?

A. While he was in the hospital, again?

Q. Yes.

A. No.

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the original document.

MR. ABRONOVITZ: Well, why don't we go off the record.

(A brief discussion was held off the record.)

(E-mail to Janet from Bob McVey dated 12/5/03 marked as McVey Exhibit No. 2.)

MR. PETTINGELL: Off the record.

(A brief discussion was held off the record.)

(Question read back.)

Q. The document we've marked as Exhibit 2, can you -- can you tell us what that document is, please, sir?

A. This is a correspondence that I sent to Sunderland Marine regarding the accident Matt Russo had.

Q. And what's the date of the correspondence?

A. December 5th.

Q. This is --

A. 200- --

Q. -- an e-mail, is it?

A. Yes. It is.

Q. And it says "From: Deweydog@aol.com."

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Q. Okay. I'd like to show you a document --

MR. PETTINGELL: And for the record -- for your purposes, this is Bates stamped 000369.

MR. LANGER: This highlighting is not part of the original document, I'm assuming.

MR. PETTINGELL: That's correct. That's my highlighting. It's the only way I can read them.

Q. -- and ask, sir, if you'd look at that and tell me whether or not you recognize it.

(A brief discussion was held off the record.)

MR. LANGER: The question is, do you recognize the document?

A. Yeah. Yes. I recognize it.

Q. All right. Can you tell me what that document is?

MR. ABRONOVITZ: Can we mark it first?

MR. PETTINGELL: All right. Let's mark it as Exhibit 2.

MR. LANGER: With the understanding that the highlighting is --

MR. PETTINGELL: The highlighting is not on

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A. Yes.

Q. Is that your -- or was that your e-mail address at the -- the time, December 5th, 19- -- 2003?

A. Yes.

Q. And I wonder, sir, if you could read the first paragraph into the record.

A. "I have just finished going over the claim involving Matt Russo and realized that he is covered as a crew member. His father Sal is listed as 100% -- 100% ownership with Matt being the captain. Matt is listed as part-owner on their other 2 vessels, the F/V Josephine and the F/V Damariscotta. They are covered for three to four men on the Mary & Josephine."

Q. So as of December 5th, 2003 when you sent this e-mail -- and this e-mail went to who?

A. Janet Cook.

Q. And who's Janet Cook?

A. She's the claims advisor of the claims, in charge of claims at Sunderland Marine.

Q. In England?

A. Yes.

Q. All right. At the time that you sent Ms. Cook

this e-mail we've marked as Exhibit 2, you were of the opinion that Mr. Russo was covered as a crew member, he was entitled to coverage under the policy?

MR. LANGER: Objection.

A. Not necessarily.

Q. Perhaps you can explain to me then what you meant when you said you -- you "just finished going over the claim involving Matt Russo and realized that he is covered as a crew member?"

A. Well, we didn't realize at the time that he was on port risk.

Q. You didn't know --

A. Because -- we -- we knew, but it kind of slipped out.

Q. So at the ti --

A. Once --

Q. I -- I beg your pardon. I -- I don't want to cut you off. Go ahead.

A. Once we went back over the claim, we realized that the boat wasn't fishing, and it was on port risk.

Q. I see. So when you -- when you sent this e-mail marked as Exhibit 2, you had forgotten

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that the vessel Mr. Russo was working on was on port risk?

A. No. I hadn't forgotten. This is, pretty much, a generic makeup of the course of the year.

They were covered for three to four men. And when the boat was actively fishing, when they were covered, Matt was a covered crewman.

Q. Uh-huh. Well, I'm referring to the first sentence in the first paragraph where you state, "I have just finished going over the claim involving Matt Russo and realized that he is covered as a crew member."

A. Yeah. When the boat was actively fishing, he was listed as a crew member.

Q. Well, coming up to the top, the subject of this e-mail is "Matt Russo F/V Mary and Josephine."

And, in the first paragraph, you're talking about the "claim involving Matt Russo." So when you say he's covered as a crew member, that doesn't mean that you believed that he was -- that his claim was a covered claim under the policy?

MR. LANGER: Objection.

A. Correct.

MR. LANGER: Form of the question. Wait till he finishes his question --

THE WITNESS: Sorry.

MR. LANGER: -- before you answer it.

Q. You say that wha -- my statement was correct? Repeat it again.

MR. PETTINGELL: Can I have it read back, please.

(Question read back.)

MR. LANGER: Objection to the form.

Foundation. Calls for a legal conclusion.

MR. PETTINGELL: Well, you stated your objection and the basis for it. And I thank you. But this is Mr. McVey's language, and I'm trying to understand what he means when he says "covered."

MR. LANGER: Well, then, ask him what he means, rather than telling him what you think he means.

MR. PETTINGELL: Well, I'll ask my question the way I want.

MR. LANGER: Fine. I'll object to it.

MR. PETTINGELL: And you can object to it.

Q. At the time that you wrote this e-mail,

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Mr. McVey, you were aware that Sunderland was denying coverage. At least, one of the bases for denying coverage was that Mr. Russo was an owner of the vessel.

MR. LANGER: Object to the form and the foundation of the question.

A. I think they were looking into the fact that he might have been an owner, but I don't think the claim was directly denied because he was an owner.

Q. All right. Do you know whether or not the claim was ever denied on the basis that Mr. Russo was an owner of the vessel?

A. No. I don't.

Q. Okay. In any event, the first paragraph of Exhibit 2, referring to that first paragraph of Exhibit 2, is it fair to say you were telling Ms. Cook that he was not an owner?

A. Yes.

Q. And your statement that you -- and I quote -- "I have finished going over the claim involving Matt Russo and realized that he is covered as a crew member."

A. When he was being a crew when the boat was

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active.

Q. Well, was the boat active at the time of his injury?

A. No.

Q. Why did you pick this particular time, December 5th, 2003, to pass that bit of information on to Ms. Cook at Sunderland?

A. I don't remember the context. But she might have been asking me how many crew was on the boat when it was insured for active fishing.

Q. Now, were you involved at all in placing the vessel on port risk only coverage?

A. Yes.

Q. And what was your involvement?

A. I received a phone call from Matt Russo, telling me to put the boat -- that the boat hadn't been fishing and will not be fishing. I reiterated that information to Lynn.

Q. Do you remember when that phone call was?

A. The beginning of October, I believe, 2003.

Q. Was there any discussion during that telephone call about a reduction in the size of the crew on the vessel?

A. Yes.

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A. Ms. Houde.

Q. What was your understanding as to what she was going to do with the information you had passed on to her?

A. I really don't know what Lynn's procedures are when she's in the office.

Q. Speaking generally, is it your understanding that that information was to be communicated to Sunderland?

A. I really don't know.

Q. Okay. This is something that would be better left for --

A. Yeah.

Q. -- Ms. Houde to discuss?

A. Exactly.

Q. All right. Fair enough. Okay. I may have just asked you this, but your answer is not clear to me so I understand it. What was your purpose in telling Ms. Houde that Mr. Russo didn't want to have any crew coverage while the vessel was on port risk?

A. The purpose was 'cause she keeps the records, and she does the paperwork involvement.

Q. Was it necessary that something formally happen

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Q. Would you tell us about that, please?

A. Mr. Russo indicated to me -- told me that there was no crew on the vessel; there hadn't been, I believe, since May; and there will not be till further notice.

Q. Did he instruct you that he wished to have the size of the crew reduced under the policy?

A. Yes.

Q. And when was this call?

A. The beginning of October.

Q. And what is your memory of -- of what Mr. Russo asked you to do?

A. He said that the boat hadn't been fishing -- I believe, again -- since May and presently wasn't fishing, wasn't going to be fishing; and he did not want any crew covered on the boat.

Q. Okay. And, in response to that, what did you do?

A. I talked to Lynn and gave her the information.

Q. For what purpose?

A. So we could see if we could get him some money back on his policy.

Q. Now, was it your understanding that Lynn -- and by Lynn, you mean Ms. Houde?

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with respect to the policy in order to effect a change in coverage or the change in coverage that Mr. Russo was asking you for?

A. Again, that would probably be more Ms. Houde's department than mine.

Q. I understand that. But you passed it on to her for purposes of recordkeeping.

A. Right.

Q. And what -- what was your understanding of why that was necessary, your understanding of why that was necessary?

A. So Matt Russo wouldn't have to pay a premium on his crew when he wasn't using it.

Q. So you were passing this information on to Ms. Houde so that she could get a return premium, if possible, for --

A. Yes.

Q. -- the client? Okay. Now, do you recall -- is that what I gave you there? Do you recall getting a response back from Sunderland to your e-mail of December 5th that we've marked as Exhibit 2?

A. No. I don't.

MR. ABROMOVITZ: What are you looking for?

MR. PETTINGELL: An unmarked copy of this. Let me show you a document -- this is Bates stamped 382 -- and ask if you'd take a moment and look at it.

MR. PETTINGELL: I'm going to have this marked as Exhibit 3.

(E-mail to Bob McVey from Craig McBurnie dated 12/8/03 marked as McVey Exhibit No. 3.)

Q. Have you had a chance to review it?

A. Yes.

MR. PETTINGELL: Okay. Why don't we mark that as the next exhibit, as Exhibit 3.

THE WITNESS: We marked it already.

MR. LANGER: We marked it.

MR. ABRONOVITZ: It's marked.

Q. Can you tell us what that document, Exhibit 3, is?

A. It's correspondence to me from Craig McBurnie from Sunderland Marine.

Q. Okay. Now, calling your attention to the third paragraph of that correspondence, was this the first indication you received from Sunderland that one of the bases for their denial of

Q. Okay. Can you read the handwriting to yourself?

A. Yes.

Q. And do you have any knowledge as to what that refers to?

MR. LANGER: Don't guess. If you know, fine.

A. I don't.

Q. Okay. Fair enough. That's not your handwriting?

A. No.

Q. Well, I suspect that the "Bill" is Mr. Scolia. So we'll -- we can always go on to him when we take his deposition. Now, Mr. Russo's corporation had obtained insurance for the Mary & Josephine through OHI for two years prior to the incident in which he was injured on his boat in December of 2003; is that correct?

A. That's correct.

Q. And were you involved in -- strike that. And I -- I think you testified back in January that you were involved in the initial placement of coverage?

A. Yes.

coverage for Mr. Russo's claim was that

Sunderland had deleted crew P&I coverage entirely until fishing recommenced?

MR. LANGER: Objection to the form and foundation of the question. Assumes facts not in evidence.

A. Could you read that back, please?

(Question read back.)

A. I'm not sure.

Q. Do you remember having any discussions with anybody at Sunderland, telephone conversations, where the fact that crew P&I coverage had been deleted entirely while the vessel was on port risk at any time prior to this December 8th, 2003 correspondence?

MR. LANGER: You mean, between the date of the accident and December 8th?

MR. PETTINGELL: Yes. Thank you.

A. I can't recollect any.

Q. Now, there's a handwritten notation that appears, "Per Bill." Do you see that?

A. Yes.

Q. Whose handwriting is that, if you know?

A. I really don't know.

Q. You provided quotes for coverage?

A. Yes.

Q. Is that also correct with respect to Policy Year 2?

A. Correct.

Q. So in the second -- excuse me -- third paragraph where Mr. McBurnie, an underwriter at Sunderland, writes to you that "last year, we" -- well, strike that. "In addition, cover at present is restricted to Port Risks only following your fax of October 3rd. Last year, we did the same (as per Lynn's of 17th September '02) and deleted crew P&I coverage entirely until fishing recommenced."

Were you involved at all in a request that crew P&I coverage be deleted entirely for Policy Year 2 while the vessel was on port risk?

A. I don't remember.

Q. Okay. This reference to a -- your fax of October 3rd, do you have that fax with you here today?

A. I think we might.

MR. LANGER: Do you have it?

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have it. No. I do not have it.

MR. PETTINGELL: Let's go off the record. (A brief discussion was held off the record.)

MR. PETTINGELL: With Mr. Langer's assistance, we found the fax.

MR. SCOLA: Then it must be the calculation that's missing.

MR. PETTINGELL: And it appears that it was a fax sent by Ms. Houde. So --

MR. ABRONOVITZ: Do you want to mark it now, Dick, or no?

MR. LANGER: He referred to it. We might as well mark it.

MR. ABRONOVITZ: Yeah.

MR. PETTINGELL: Yeah. Why don't we mark it.

(Fax to Tracy Tate from Lynn Houde dated 10/3/03 consisting of one page marked as McVey Exhibit No. 4.)

MR. PETTINGELL: And this is Exhibit 4?

COURT REPORTER: Yes.

Q. Mr. McVey, I'd like you to look at what we've

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

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the document marked Exhibit 4 you've never seen before today?

A. I don't recollect seeing it before. No.

Q. Then we can move on. Now, at the time that you and Mr. Russo had a conversation about the vessel going on port risk, what was your understanding of the purpose for the vessel going on port risk?

A. It was to save Mr. Russo some premium.

Q. And that's because the vessel hadn't been fishing. So he was trying to retroactively save some premium?

A. Correct.

Q. Was there any other reason that the boat was to go on port risk that you were aware of?

A. Not that I'm aware of.

Q. Okay. Do you recall whether or not -- strike that. We had some discussion last January about an annual survey of vessels that were being insured with the Sunderland being undertaken. Do you recall that?

A. Vaguely, I recall.

Q. All right. And it's a requirement of Sunderland that the vessels that it is

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marked as Exhibit 4 and ask you if, to your knowledge, that is the fax that you were

referring to and which, apparently, is referred to in the correspondence to you that we've marked as Exhibit 3?

MR. LANGER: Just to make it clear, you just asked him whether it was a -- a fax he referred to, and then you said in the correspondence to him. So can you just clarify the question?

Q. Well, have you seen the document we've marked as Exhibit 4 before?

A. No.

Q. Okay. Following your receipt of the correspondence marked as Exhibit 3 from Craig McBurnie, which made reference to your fax of October 3rd last year -- excuse me -- October 3rd, did you make any effort to see what he was referring to?

A. I wouldn't have any reason to.

Q. Well, so the answer to my question is, you did not?

A. No.

Q. Okay. And, I take it -- I think I take it that

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providing insurance for have to be surveyed every year, don't they, prior to renewal?

A. Approximately, every year.

Q. All right. And was this done with regard to Mr. Russo's vessel or the Mary & Josephine?

MR. LANGER: At which point?

MR. PETTINGELL: Prior to the renewal.

MR. LANGER: Which renewal?

MR. PETTINGELL: 2003, Policy Year 3.

A. I don't remember.

Q. Do you recall any year -- now, there were three policies issued for this vessel; is that correct?

A. I believe so.

Q. The first year covered from August of 2001 to August of 2002?

A. Yes.

Q. The second year covered from August of 2002 to August of 2003?

A. Yes.

Q. And the vessel was up for renewal, which would have covered from August of 2003 to August of 2004?

A. Yes.

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are of recommendations on the Mary & Josephine during the period that the vessel was on port risk prior to taking the boat out fishing for Policy Year 3?

A. I don't.

Q. I asked if you recall. Are you saying you -- you just don't have a memory one way or the other? Or that definitely didn't happen?

A. I don't think it happened.

Q. You don't think it happened?

A. It -- it -- not to my recollection, it didn't happen.

Q. Okay. I think we're at the same point. Did you ever tell Mr. Russo that there was no crew P&I cover while his vessel -- or the vessel he was captain of was on port risk?

A. I discussed it with him when he called me in the beginning of October. So I probably would have said, we'll try to take care of it.

Q. I'm not certain that was responsive to my question. Did you ever tell Mr. Russo that while his boat -- the boat that he was captain of was on port risk, there was no crew P&I coverage --

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the boat hadn't fished. Again, I think it's since May of 2003. It was not fishing presently, and it probably wasn't going to fish till several months into the year. And he did not want any P&I, no crew at all.

Q. Okay. And what did you respond?

A. I responded, we'll take care of it.

Q. Did you tell him, well, don't worry; there's no P&I just as soon as you put it on port risk

MR. LANGER: Objection to the form of the question.

Q. By virtue of putting it on port risk, there's no crew P&I coverage?

A. He asked me for zero P&I coverage.

Q. Right. And my question was, did you tell him, well, don't worry, it's automatic; if you put the boat on port risk coverage, there is no crew P&I cover?

A. I never use the word "automatic" in dealing with insurance issues.

Q. Well, isn't it your testimony that you understand that if the vessel is on -- if a vessel is on port risk coverage, there is no crew P&I cover?

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A. Yes. I did.
Q. -- for the policy? You have a memory of doing that?

A. Yeah.

Q. Okay. When did you tell him that, sir?

A. Probably when he called me in October.

Q. You say "probably."

A. Yeah.

Q. Do you have a memory of telling him in October?

A. Vaguely.

Q. Of what year?

A. 2003.

Q. Did you ever tell him at any time that there was no crew coverage available if the vessel was on port risk at any time before October of 2003?

A. I don't recall.

Q. But you do have a memory of telling him that in October of 2003?

A. We discussed it, I believe, when he called me in October. Yes.

Q. Could you tell us about that conversation, please, sir?

A. I had a call from Matt Russo, telling me that

A. That's correct.

Q. And that's automatic. Right?

A. Yeah.

Q. That's just by virtue of having a boat go on port risk. There's vessel P&I coverage, but the crew P&I coverage is cancelled?

A. Is nonexistent.

Q. Is nonexistent. That's your understanding?

A. Yes.

Q. And that's your understanding based upon your 16 years of experience in the industry?

A. Yes.

Q. And someone at OMI told you that. You don't remember who?

MR. LANGER: Objection. It's been asked and answered. He's been through this twice now. Do we need to go through it again?

MR. PETTINGELL: Yeah.

MR. LANGER: Well, I'm going to instruct

him --

MR. PETTINGELL: Well, we're not --

MR. LANGER: -- not to answer that for -- you're -- you're just asking him the same questions again and again.

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MR. PETTINGELL: You know, you're -- you're making my train of thought.

MR. LANGER: Well, I don't mean to do that.

MR. PETTINGELL: But --

MR. LANGER: -- been through this --

MR. PETTINGELL: But --

MR. LANGER: -- twice.

MR. PETTINGELL: Let me finish it, and

we'll move on.

MR. LANGER: Good.

MR. PETTINGELL: Can we have my question read back, please.

MR. ABRONOVITZ: I'll also state -- let me just state on the record that, in this jurisdiction, you cannot instruct the witness not to answer a question. You can suspend the deposition. You can get a court order and a protective order. You cannot tell him not to answer a question.

MR. LANGER: Okay. Then we'll do that.

MR. PETTINGELL: It's not necessary.

Just --

MR. LANGER: Keep going.

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1 A. Yes.

2 Q. And the vessel was on port risk in the first
3 policy year?

4 A. Yes.

5 Q. And coverage was placed through Sunderland?

6 A. Yes.

7 Q. Coverage was not placed by Sunderland with
8 North American Specialty Insurance Company in
9 that first policy year. It was placed with a
10 different company, wasn't it?

11 A. I believe so.

12 Q. Fairfield?

13 A. I believe, Fairfield.

14 Q. All right. And then, in the second policy
15 year, coverage was placed by Sunderland with
16 North American Specialty?

17 A. Correct.

18 Q. And the vessel went on port risk?

19 A. Correct.

20 Q. And there was a third policy issued, wasn't
21 there?

22 A. Yes.

23 Q. And coverage was placed by Sunderland with
24 North American Specialty?

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1 MR. PETTINGELL: -- let's get this -- let's
2 get by this and move on.
3 (Question read back.)

4 Q. Is that correct?

5 A. That's correct.

6 Q. All right. And my question is, did you, sir,
7 ever tell Mr. Russo that that's what happened
8 if the vessel went on port risk coverage, that
9 the --

10 A. Yes.

11 Q. -- would be -- you did tell him that?

12 A. (Witness indicates).

13 Q. When did you tell him that?

14 A. I don't remember exactly when I told him.

15 Q. Well, do you remember what year?

16 A. He was on and off port risk so much that it's
17 hard to recollect exactly when I told him, but
18 we discussed it.

19 Q. Now, the Mary & Josephine was covered three
20 policy years. Right?

21 A. Not quite three. I don't think it made it
22 through the third one.

23 Q. Well, there was three policy years
24 contemplated?

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1 A. Yes.

2 Q. And that's the policy where the vessel went on
3 port risk and was on port risk at the time of
4 Mr. Russo's injury?

5 A. Yes.

6 Q. In each of those years -- now, you've told us
7 that, in October, I think you said, or sometime
8 prior to the renewal of coverage -- perhaps, it
9 would have been earlier than October because
10 coverage was renewed for Policy Year 3
11 beginning in August of 2003, wasn't it?

12 A. Correct.

13 Q. And I apologize if I asked you this. Do you
14 remember when Mr. Russo and you had a
15 conversation where he indicated he wanted the
16 vessel to go on port risk?

17 MR. LANGER: Objection. It's been asked
18 and answered.

19 MR. PETTINGELL: I'm just trying to --

20 A. I'm not positive. It could have been in Oc- --
21 October when he called me.

22 Q. Okay. Now, you've testified that you -- you
23 have a memory of a conversation with Mr. Russo
24 where you told him that if the vessel was on

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not for Policy Year 2?

And you have an express memory not for Policy Year 3?

A. Correct.

Q. Okay.

MR. PETTINGELL: I'm getting close to the end, I think. Off the record for a second.

(A brief discussion was held off the record.)

(Brief recess taken.)

BY MR. PETTINGELL:

MR. PETTINGELL: All right. I only have, I think, one more area I want to go into. And there's a document that I seem to have, in my inimitable style, mislaid. So why don't I pass the witness to Mr. Abramovitz, and I'll come -- with the understanding I can come back and -- oh, I found it. Too -- too late.

Q. Now, coming back to the fact that there were three different policies issued in three different policy years, the first one, I think we have already established, was issued by

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1 A. I have no idea.

2 Q. Well, it's because you don't have the document
3 in front of you.

4 A. You want me to read the policy number?

5 Q. Yes.

6 A. Okay. It would read DMN0000003-00.

7 Q. And would that refer to the Policy No. 2 that
8 we've been referring as Policy Year 2, which
9 would be from August 13th of 2002 to
10 August 13th, 2004 --

11 MR. LANGER: Well, the document speaks --

12 Q. -- '3?

13 MR. LANGER: -- for itself.

14 MR. PETTINGELL: I understand.

15 A. I believe so.

16 Q. Okay. And I think you've already indicated
17 that, during that Policy Year No. 2, Mr.
18 Russo's vessel went on port risk?

19 A. Correct.

20 MR. PETTINGELL: Time out.

21 (A brief discussion was held off the
22 record.)

23 Q. Okay. Let me show you a document and ask if
24 you can look at it.

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1 Fairfield.

2 A. Correct.

3 Q. And the next two were North American Specialty.
4 Each of those policies had different policy
5 numbers, didn't they, renewal policies?

6 A. I'm not sure of that. I'm not aware of that.

7 Q. Well, I show you a letter dated September 17th,
8 2002 from Lynanne Houde -- and -- and we don't
9 need to mark that -- and ask you whether that
10 makes reference to a renewal policy by policy
11 number.

12 MR. LANGER: Well, the document speaks for
13 itself.

14 MR. PETTINGELL: Well, I understand. But
15 I'm focusing the witness in on something that
16 he said he didn't recall.

17 MR. LANGER: Read the first paragraph to
18 yourself. For the record, Mr. Pettingell's
19 referring to a letter dated September 17th,
20 2002 from Lynanne Houde to Matteo Russo.

21 A. Okay.

22 Q. And does that refer to a policy number?

23 A. Yes.

24 Q. And that policy number would be what?

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1 MR. PETTINGELL: Would you make some copies
2 of that? Then we'll make copies of this after.
3 Off the record.

4 (A brief discussion was held off the
5 record.)

6 (American Institute Port Risk Endorsement
7 dated 1/18/70 marked as McVey Exhibit
8 No. 5.)

9 (Endorsement dated 12/9/02 marked as McVey
10 Exhibit No. 6.)

11 Q. Now, looking at what we've just marked as
12 Exhibit 6, do you have that document before
13 you?

14 A. Yes.

15 Q. Have you had a chance to read it?

16 A. No. I'm reading it now.

17 (Pause.)

18 Q. Let me know, please, when you're finished
19 looking at it.

20 A. Finished.

21 Q. All right. Can you tell us what that document
22 is marked as Exhibit 6?

23 A. It looks like an endorsement.

24 Q. What's an endorsement?

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An endorsement is something added to an existing policy.

Q. Would it be fair to say it's a document that's issued reflecting a policy change of some sort --

A. Yes.

Q. -- change in coverage?

A. Yes.

Q. To your knowledge, do they always issue when there's a --

MR. LANGER: Objection.

Q. -- change in coverage?

MR. LANGER: It's been asked and answered. This was covered in some detail in January.

A. I don't know that they're always issued.

Q. Okay. And looking at the lower right-hand corner, there's reference to a policy number. Do you see that?

A. I do.

Q. And would you agree with me, sir, that that policy number that is referenced there is the policy number that is for Policy Year No. 2?

A. Yeah. The same.

Q. Okay. What changes does this endorsement

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reflect?

MR. LANGER: Objection. The document speaks for itself.

A. It says "amended from Operational to Port Risk."

Q. Okay. And does it reference a particular port risk endorsement?

A. Yes.

Q. American Institute Port Risk Endorsement dated January 18, 1970?

A. Yes.

Q. Is that a policy form that you're familiar with?

A. Somewhat familiar with it.

Q. Well, you've seen it before?

A. Yes.

Q. Looking at the document we've marked as Exhibit 5, take a moment to look at that.

(Pause.)

A. I've read it.

Q. Okay. Is Exhibit 5 the American Institute Port Risk Endorsement dated January 18, 1970 that you're somewhat familiar with?

A. Somewhat.

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Q. It says, "The Navigation Limit is amended to:

'Port Risk Only. Warranted No Fishing.'" Do you --

A. Yes.

Q. -- see that? Is that something that does appear routinely on -- on endorsements when a vessel goes on port risk?

A. Yes.

Q. All right. And reading down a little further, "Endorsement Section I & II, ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED." Do you see that language?

A. Yes.

Q. Do you know what that means?

A. Yes.

Q. What does it mean?

A. Just what it says it means.

Q. Well, can you explain to us?

MR. LANGER: What is his understanding?

I'm -- I'm --

MR. PETTINGELL: Well, he said he's somewhat familiar with port risk. He said he's -- he said port risk doesn't provide a crew P&I cover. I think I'm entitled to

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Correct.

Q. But let's say I went and visited Matt Russo, who was working on the boat during the period of time that that vessel P&I was in effect, and I got hurt due to some defective condition on the vessel and I'm not a member of the crew, would I be covered?

MR. LANGER: Objection. Calls for a legal conclusion.

MR. ABRONOVITZ: Well, I'm asking his understanding.

A. I would say, probably.

Q. Okay. And let's assume that the -- during the same period of time -- this is when the vessel is covered under vessel P&I and not crew P&I when the vessel's tied up at the dock -- let's assume that, through something done by Mr. Russo as captain of the boat, the dock is actually damaged. Would the vessel be covered for damage to the dock, your understanding?

MR. LANGER: The same objection. It calls

for a legal conclusion.

A. I believe it would.

Q. Okay. Have you seen anything in any of the

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1 policies that were issued through your company
2 that were in effect -- this is a policy or
3 endorsement -- that were in effect for the
4 period of August '03 to August '04 that defines
5 vessel P&I coverage in the manner in which
6 you've defined it?

A. I haven't seen anything that I recollect. No.
7 Have you seen anything in the policies -- and,
8 again, I'm referring to Policy -- for policy
9 year '03, August '03 to August '04 -- have you
10 seen anything in the policy that says there was
11 no crew coverage for P&I during that policy
12 year?

A. We have a document here from Sunderland that

14 says that there was no crew P&I.

15 Q. What document are you referring to, sir?

16 A. I think it was a letter that he sent to me.

17 Q. Are you referring to Exhibit No. 3?

18 A. Yes.

19 Q. Okay. How about in the insurance policy
20 itself, have you seen anything in the insurance
21 policy or any endorsement issued by or on
22 behalf of NAS that says there was no crew
23 coverage for P&I while this vessel was at the

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1 dock in December of '03 when Matt Russo was
2 injured?

A. I haven't seen it.

3 Q. Let's go to Exhibit No. 6, which is the
4 preceding policy year, the policy year of
5 August '02 to August of '03. What is your
6 understanding as what is meant by -- with
7 reference to a port risk endorsement of "Crew
8 of 1 excluding Owner"?

9 A. Sometimes, in a situation where we know there's
10 going to be somebody on the vessel,
11 particularly if a crewman's on there as a
12 watchman or he's doing work, we suggest that
13 they keep one guy covered.

14 Q. Were you aware that at the time of Matt Russo's
15 accident in December 2003 that what Mr. Russo
16 was doing was carrying out one of the repairs
17 that was recommended by the surveyor of the
18 vessel?

A. I was not aware of that.

20 Q. Did your office arrange for the survey on the
21 vessel for that particular policy year?

A. Possibly.

23 Q. Would that be something that, given your

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1 relationship with Sunderland or NAS, if a
2 survey was requested by the underwriter that
3 your office would arrange?

A. It -- it could be done automatically.

4 Q. Okay. Would -- you're familiar with Marine
5 Safety Consultants, are you not?

A. Yes.

7 Q. Are you aware that they had done a survey on
8 this particular vessel?

A. At what time?

10 Q. In connection with the repairs that were being
11 carried out to the outriggers at the time of
12 Matt Russo's accident.

A. Was I aware at what point?

14 Q. Sure. Let me ask the question this way.

A. Please.

16 Q. Matt Russo was injured during the course of
17 performing some work in connection with
18 installing new outriggers while the vessel was
19 at the dock in Gloucester. Correct?

20 A. I believe so. I'm not exactly sure what he was
21 doing. But --

22 Q. Well, take a look at your Exhibit No. 2, which
23 is your e-mail to Janet at Sunderland dated 05
24

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December of 2003. And take a look at the last paragraph of that -- of that letter. And I'll quote into the record. "A brief synopsis of the accident: They were installing new outriggers at the dock and Matt was atop outrigger measuring the stays when the cleat holding the outrigger let go and crashed down with Matt on top of it."

Did I read that correctly?

A. Yes.

Q. Do you know why it was that Matt Russo was installing new outriggers at the time of his accident?

A. No.

Q. Where did you get the information that that's the work that Matt was performing at the time he was hurt?

A. From Matt himself.

Q. And this is during your telephone conversation with him when he was in the hospital?

A. Yes.

Q. Was there anything of which you're aware in the Sunderland policy that prevented the captain of the boat from carrying out some of the repairs

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the Mary & Josephine to save money.

Q. Can you show me anything in the policy itself or any endorsements issued in connection with the policy that support your position?

A. No.

Q. Now, assuming there is nothing in writing to support your position that there was no crew coverage for Matt Russo, was there anything in the policy or any of the endorsements to the policy that prevented a crew member aboard the vessel, such as Matt Russo, from carrying out the recommendations made by the surveyor?

MR. LANGER: You mean, regardless of whether there was coverage or not?

Q. Let's start with regardless of whether there was coverage or not.

A. It -- it's his vessel. He could do whatever he wants.

Q. Okay. And assuming there was nothing in the policy that says Matt Russo was not covered at the time he was hurt, is there anything else in the policy that says, if Matt Russo was injured during the work -- doing the work recommended by the surveyor, he would not be covered?

recommended by the surveyor when performing the survey at a request of an underwriter such as MAS?

A. Repeat that again, please, Joe.

Q. Sure. I'm going to ask you to assume that at the time Matt Russo got hurt that the out -- new outriggers were being installed on the recommendation of the surveyor, Marine Safety Consultants.

Assuming that to be so, was there anything under the Sunderland pol -- strike that -- anything under the MAS policy that was in existence at the time of Matt Russo's accident from August '03 to August '04 that said, if Matt Russo gets hurt while performing this work, there is no coverage?

MR. LANGER: Objection. Calls for a legal conclusion.

Q. Your understanding of the policy.

A. My understanding of the pol -- he would not be covered if he --

Q. Why not?

A. -- got hurt. Because he specifically asked me to drop all crew -- crew P&I from his policy on

A. Not that I'm aware of.

Q. Is it fair to say that, in your dealings with the Mary & Josephine Corporation insofar as insurance coverage being placed for the vessel Mary & Josephine, you dealt primarily with Matt Russo?

A. Correct.

Q. Did you deal with Sal Russo at all?

A. No.

Q. Have you ever had a conversation with Sal Russo?

A. No.

Q. How about Matt Russo's brother Gerry, have you ever -- ever had any conversations with Gerry concerning placement of insurance coverage aboard the -- or for the fishing vessel Mary & Josephine?

A. No.

Q. Is it fair to say that if Matt Russo needed to contact somebody on behalf of the underwriter, he would contact someone in your office, OHI?

A. Yes.

Q. And you would be the principal contact for Matt Russo?

Yes.

Q. And that's the nature of the relationship that you fellows had during the couple of years that you did business together?

A. Correct.

Q. It's your testimony that Matt Russo requested an endorsement, in your conversation in early August '03, excluding all crew P&I for the fishing vessel Mary & Josephine. Correct?

A. He didn't use the word "endorsement."

Q. Well, let me ask the question this way. It's your testimony that during your conversation in early October 2003 that Matt Russo requested that because the vessel was on port risk that there be no P&I coverage?

A. That's correct.

Q. Yet, two months later, as of the time of his accident, no endorsement had issued from the company to that effect; is that correct?

A. I believe so.

Q. Do you know why that is?

A. Well, I -- I do. I can -- part of the reason is, when -- it's called a lay-up credit; and we usually wait till he tells us the boat's going

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Q. Was there anything in writing that you gave her, either written or e-mail or anything to that effect?

A. I believe it was done by phone call or in person.

Q. Okay. And so the answer to my question is, there is no written memo or e-mail from Bob McVey to Lynn Houde to the effect of, Matt Russo wants you to take P&I coverage off the vessel while it's on port risk. Is that statement correct?

A. That's correct.

Q. And it was Lynn's job then to communicate the desire of the vessel owner to the underwriter to effect the issuance of an endorsement. Correct?

A. That's correct.

Q. And it wasn't done in this case either because she hadn't gotten around to it, or she didn't do her job properly. Correct?

MR. LANGER: Objection.

A. No. I wouldn't --

MR. LANGER: Mischaracterize it.

A. -- say that.

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back fishing so we can prevent a lot of paperwork from -- if he says, I'm not going or I'm going. So we usually wait till he says the boat is off port risk. Then we calculate the time and the monies involved and return him lay-up credits.

Q. How -- how much work is involved in issuing an endorsement saying there is no crew coverage?

A. I don't issue them. So I really don't know.

Q. Is that Lynn Houde's job?

A. Yes.

Q. And when a customer such as Matt Russo requests the elimination of crew coverage, is it your job then to communicate that information to Lynn Houde, who then deals with the underwriter in generating the paperwork?

A. That's correct.

Q. Now, in this particular case, is it your testimony that you -- you communicated to Lynn Houde the request of Matt Russo that crew coverage be eliminated during the period the vessel was on port risk in this third policy year?

A. Yes.

MR. LANGER: It mischaracterizes the testimony and assumes facts not in evidence. And it's argumentative.

Q. Let me ask the question this way. Have you seen anything in writing, by way of a memo, e-mail, anything, going from Ms. Houde to either Sunderland or MAS wherein it was communicated to the underwriter that the vessel owner wanted to eliminate crew P&I during the period of time that the vessel was on port risk?

A. Yes.

Q. Where did you see it?

A. I thought we had one of these documents here that was sent, this one dated October 3rd, "Dear Tracy."

MR. LANGER: It's Exhibit 4.

A. Exhibit 4.

Q. Okay. Where in this document do you read a communication from Lynn Houde to Tracy that says the vessel owner wants no P&I coverage while the vessel is on -- P&I crew coverage while the vessel is on port risk?

A. It says, "Insured just called to let us know

the vessel has not been fishing since May 1st, 2003. He forgot to call us earlier. The account did renew on 8/13/03."

Q. So where does it say that Matt Russo is asking that the company issue an endorsement for port risk coverage different than was issued the previous year, as reflected in 06- -- in -- in Exhibit No. 6?

A. It -- it doesn't. I think he followed up with a phone call to Lynn.

Q. You're saying that Matt Russo called Lynn sometime after October 3rd, 2003?

A. No. I think it was on October 3rd.

Q. So the same day that you spoke to Matt Russo about what his desires were with coverage, you believe that Matt Russo also spoke to Lynn Houder?

A. Yes.

Q. Why do you say that?

A. Because I think I instructed Matt to call Lynn to tell her direct. I might have been on the road, driving in my vehicle. And I probably told him, why don't you call Lynn and -- which we do often because Lynn is the one that would

be taking care of that end of the policy.

Q. And did Lynn tell you that she, in fact, spoke with Matt Russo on October 3rd, 2003?

A. Yes.

Q. And what did she tell you that he said to her?

A. He reiterated what he said to me, that he didn't want any crew coverage.

Q. Have you seen any communications between Lynn Houde and -- strike that. First of all, who is Tracy, Tracy Tate at SM?

A. That's Sunderland.

Q. Okay. Other than this fax, Exhibit 4, dated October 3rd, 2003, have you seen any communications between Lynn Houde and Sunderland Marine referencing the desire of Matt Russo, on behalf of M & J Corporation, to eliminate crew coverage for PAI while the vessel was on port risk?

A. I haven't. But I very rarely do see -- see correspondence between Lynn and Sunderland.

Q. So are you saying there may be additional correspondence that's not been produced in connection with this case?

MR. LANGER: Objection.

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A. There could be.

Q. Do you know why any --

A. I don't see how -- why --

Q. -- additional --
A. No,

Q. -- correspondence has not been produced
that's --

A. I don't think --

Q. -- been requested?

A. I don't know --

MR. LANGER: Objection.

A. -- if there is correspondence. As I said, I don't see it. So I don't know what's there.

Q. Okay. Let's go to your e-mail to Janet of December 5th, 2003. Do you have that in front of you, Mr. McVey?

A. Yes. I do.

Q. Okay. Prior to sending this e-mail, what, if

anything, did you review in connection with the policy of insurance issued through your office for the Mary & Josephine Corporation regarding the fishing ves- -- fishing vessel Mary &

Josephine for the policy year Aug-- August '03 to August '04?

A. I believe I reviewed his application.

Q. Did you look at the policy itself?

A. I don't recollect if I did or not.

Q. Insofar as the filing system as maintained in the offices of OMI in the time frame of December '05, would there be a -- do you have a separate folder per policy year per vessel? Or how do you guys file?

A. We have a -- a file that contains all the policy years, a single file.

Q. Okay. And when a vessel owner such as -- strike that. Are you saying there was a single file for the M & J -- Mary & Josephine Corporation for the fishing vessel Mary & Josephine from the very beginning of the placement of the coverage through the last policy issued?

A. Yes.

Q. Okay. Did you look through that file prior to sending the e-mail on December 5th, 2003, Exhibit No. 2?

A. I -- I probably did.

2. Okay. And is it fair to say you saw no written endorsement in connection with that policy that

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eliminated crew coverage for that policy year, P&I crew coverage?

That's correct.

Q. Now, let's go to the third paragraph of your letter. You testified that it was your opinion when you wrote this e-mail that there was no insurance to cover Matt Russo's accident?

A. Yeah.

Q. Then why did you go on to say, quote, "If all goes well, hopefully, we can keep this claim within reason given the nature of the injuries," end quote?

A. Because what we were prepared to do, as an agency and with Sunderland, was to help Matt out financially regardless of whether he was covered or not, which we do --

Q. Did you do that?

A. -- which we do often.

Q. Did you do that in this case?

A. Matt rebuffed our efforts.

Q. Did you ever pay any of Matt Russo's medical bills?

A. Not that I'm aware of.

Q. In what way did Matt rebuff your efforts to

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e-mail to Janet.

A. Well, there was some ambiguity as to far as -- as far as if Matt was an owner. As she mentions in here from correspondence with Marine Safety, they was under the impression that Matt was an owner. I went and looked up his policy and -- and straightened out that situation, said he was not a owner, that Sal was a hundred-percent owner.

Q. Why was that significant?

A. Excuse me?

Q. Why was that significant, whether Matt was an owner or not?

A. Because, if he was an owner, he probably wouldn't have been covered under the policy. Was that typical in connection with insuring fishing vessels out of the port of Gloucester in that time frame?

A. I wouldn't specify Gloucester. It was significant to most fishing vessels.

Q. Okay. Most fishing vessels that were insured through your agency in the time frame of 2003 excluded P&I coverage for owners who were also crew members?

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1 help him out, as you do in cases like this?

2 A. He went and hired an attorney.

3 Q. Oh. You've never done that, Mr. McVey? That's

4 withdrawn.

5 A. I didn't say it was a bad thing. I just said

6 he went and hired an attorney.

7 MR. PETTINGELL: Lawyers have to eat too,

8 you know. Off the record.

9 Q. Isn't it true, Mr. McVey, that you -- when you

10 wrote this e-mail to Sunderland on December 5th,

11 2003, it was your opinion that there was

12 coverage under the P&I policy for Matt Russo's

13 injuries? Isn't that a fact?

14 A. No. I'd say it was ambiguous.

15 Q. Did you indicate any of that ambiguity in the

16 body of your e-mail? And Exhib-

17 MR. LANGER: Objection.

18 Q. -- we're referring to Exhibit No. 2.

19 MR. LANGER: The document speaks for

20 itself.

21 A. This is taken -- if it was taken in the context

22 of which this was sent to Janet, then it takes

23 on a different meaning as it is on paper.

24 Q. So tell me the context in which you sent this

1 A. Yes.

2 Q. Okay. And you learned that Matt Russo was not

3 an owner, but he was a crew member?

4 A. Correct.

5 Q. In what other way was -- give me the other

6 contexts in which -- strike the question.

7 Other than addressing the issue of whether Matt

8 Russo was or was not a part-owner of the

9 corporation called the Mary & Josephine

10 Corporation, what else were you attempting to

11 convey to Janet at Sunderland Marine by your

12 e-mail of December 5th, 2003?

13 A. I was just trying to clarify. When the boat

14 was operational, they were insured for three to

15 four men, including Matt, for the policy when

16 it was operational, and to also let them know

17 that he wasn't a -- he wasn't an owner. Excuse

18 me. I was just making clarifications on the

19 policy which she might have asked for earlier.

20 Okay. Can we agree that during the period of

21 time that the policy did cover Matt Russo as

22 captain of the vessel that he was one of the

23 three or four men that was contemplated to

24 be -- to be within the scope of the P&I

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there is no crew P&I coverage?

A. Yes.

Q. Okay. Who did you direct to issue such a communication?

A. Probably, Ms. Houde.

Q. And do you remember when that was?

A. We've had so many changes with this particular vessel that I'm really -- couldn't pinpoint it.

Q. Have you ever seen any such document issued by Ms. Houde to the owners of the Mary & Josephine Corporation dated before December 2 --

December 3, 2003 to the effect that when your vessel is on port risk, there is no crew P&I coverage?

A. I don't recollect that specifically.

Q. All right. If there was such a document, you'd expected it to be in the -- you'd expect it to be in the file for the Mary & Josephine Corporation as regards the fishing vessel Mary & Josephine. Correct?

A. I would expect that. Yeah.

Q. I believe, in response to one of Mr. Pettingell's questions, you've indicated that, in your conversation with Matt Russo in

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1 regarding the insurance for the vessel prior to
2 December 3rd, 2003?

3 A. I don't believe so.

4 Q. Do you know if Lynn Houde did?

5 A. I'm not sure.

6 Q. Has she ever told you that she did?

7 A. No.

8 Q. Did Bill Scolia indicate to you whether he ever
9 discussed underwriting issues with Matt Russo
10 between October 3rd, 2003 and December 3rd,
11 2003?

12 A. No.

13 Q. Have you ever seen anything issued from
14 Mr. Scolia to the M & J Corporation, Mary &
15 Josephine Corporation, prior to December 5th,
16 2003 to the effect that while the vessel is on
17 port risk coverage, there is no P&I crew
18 coverage for any of the crew members?

19 A. Not that I can recollect.

20 MR. ABRONOVITZ: Thank you. That's all I
21 have.

22 MR. PETTINGELL: I have a couple of
23 follow-up on things that you touched on.

24 REDIRECT EXAMINATION

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1 early October 2003 when he told you that he did
2 not want any P&I coverage at all for his crew
3 while the vessel was at port risk that you told
4 him you would -- you would take care of it.
5 Was that -- was that your testimony?

6 A. I believe so. Yes.

7 Q. Okay. And how would you go about taking care
8 of it?

9 A. I would reiterate his information to Lynn.

10 Q. I thought you told me before that you told Matt
11 Russo to call Lynn himself?

12 A. I did. We both did.

13 Q. Okay. So you're saying you said to Lynn that
14 Matt Russo doesn't want any coverage for -- P&I
15 coverage for crew while the vessel's in port
16 and that Matt Russo, you understood, also
17 called Lynn and told her that himself?

18 A. That's correct.

19 Q. Other than your conversation with Matt Russo on
20 October 3rd, 2003 or thereabouts wherein you
21 claim that he communicated to you his desire to
22 remove all P&I crew coverage for the Mary &
23 Josephine while the vessel was on port risk,
24 did you have any other conversations with him

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1 BY MR. PETTINGELL:

2 Q. I'm showing you a document, sir. And I
3 would --

4 MR. LANGER: Shall we mark it?

5 Q. I would suggest to you that this is a copy of
6 the policy that was issued for Policy Year 3.

7 MR. LANGER: Before you ask any more
8 questions, let's just mark it so that we'll
9 have a record of what it is he's talking about.
10 (Insurance policy effective 8/13/03 to

11 8/13/04 marked as McVey Exhibit No. 7.)

12 Q. While you're looking at it, Policy Year 3 --
13 we -- you've already testified, would run from
14 August 13th of 2003 to August 13th of 2004.

15 A. Yes. Sorry.

16 Q. So the document which has been marked as
17 Exhibit 7, would you agree that is a copy of
18 the policy that was issued for Policy Year 3?

19 MR. LANGER: Look it over and make sure
20 it's a complete copy as you understand it, if
21 you know.

22 A. Some of it's not very legible. But . . .

23 MR. PETTINGELL: While he's look- --
24 looking, for the record, the policy contains,

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at the top, Policy No. OHM000003-01.

MR. LANGER: I think that's a D, not a

zero.

MR. PETTINGELL: I think you're correct.

OHM.

(Pause.)

A. It appears to be a -- a complete policy.

Q. All right. Now, looking -- looking at the last page on Exhibit 7, where the language appears,

"This endorsement changes the policy," do you see that?

A. Under "Changes"?

Q. The last page of this.

A. Yeah.

Q. Now, the last page, would you agree, has got "Policy Endorsement Number 3"?

A. Yes.

Q. All right. And that has a policy change effective August 13th, 2003?

A. Yes.

Q. What does that mean?

A. It means that it's covered for port risk only.

Q. No, no, no. The fact that the change is

effective on August 13, 2003, what does that

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A. Yes.

Q. And, to your knowledge, did he have signing authority for purposes of signing endorsements, policy endorsements?

A. Yes.

Q. And by virtue of his signature, he was an authorized representative of whatever company he was issuing the endorsement for?

MR. LANGER: Objection.

A. Yes.

MR. LANGER: It asks for a legal

conclusion.

Q. All right. That's your understanding though?

A. It's my understanding. Yes.

Q. All right. Now, prior to the issuance and effective date -- prior to the effective date of Endorsement No. 3, would you agree with me that, as far as the policy language itself is concerned, the vessel was not covered for port risk?

Now, there's a distinction I'm making here.

I'm talking about the policy language as opposed to the effect of the endorsement. I'm saying, before the endorsement was issued, the

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mean?

A. I don't understand what you mean, what does it mean.

Q. Well, let me try this. Policy changes effective August 13, '03, do you see that language?

A. Yes.

Q. Does that mean to you that whatever changes are contained in the endorsement are effective as of August 13, 2003?

A. Yeah. Correct.

Q. Okay. Now, coming down to the bottom, can you see the date that the policy was issued --

the -- excuse me -- Endorsement 3 was issued?

A. Yes.

Q. When was it issued?

A. What it says here is February 16th, '04.

Q. All right. So we have -- and is this signed by someone?

A. It's signed by Frank Ostrow.

Q. Who's Mr. Ostrow?

A. He is the former president of OHM.

Q. Okay. Did he hold that position or a position in OHM on February 16, 2004?

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coverage would have been available -- that would have been available to the vessel would be what is contained in the policy, not counting Endorsement 3.

A. Yes.

Q. Do you agree with that?

MR. LANGER: Objection. It asks for a legal conclusion.

Q. All right. And under the language of Policy No. -- we'll call it Policy No. 3, Exhibit 7, prior to the issuance of Endorsement No. 3 and the effective date of Endorsement No. 3, was there available, under the terms of the policy, what we have been referring to as crew P&I coverage?

MR. LANGER: Objection. Calls for a legal

conclusion.

A. I would say no.

Q. You would say no?

A. Yeah.

Q. And what's the basis of your statement that there would not be?

A. Because that's what our client asked that there not be.

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key
F 13, 2005

I don't think you understood my question, and that's my fault. The policy, if you look at Exhibit 7, was issued from -- had -- had effective dates from August 13th of 2003 to August 13th, 2004; is that correct?

A. Yeah. Correct.

Q. And would you agree that the policy provisions contain the -- the scope of the coverage that would be available under the policy before any changes in -- in -- in coverage are made?

A. Yes.

Q. All right. So -- and -- and I understand it's your testimony that Mr. Russo requested that there be no P&I coverage while the vessel was on port risk. I understand that's your testimony.

And, in fact, Endorsement No. 3 to Exhibit 7, the last page, states that "It is hereby understood and agreed in consideration of a return premium of \$3,117 that the F/V Mary & Josephine is covered for Port Risk only-no fishing effective August 13, 2003 to December 21, 2003." Right?

A. Correct.

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1 didn't.

2 MR. PETTINGELL: Well, I asked the --

3 MR. LANGER: What more do --

4 MR. PETTINGELL: -- the bas --

5 MR. LANGER: -- you want?

6 MR. PETTINGELL: Please. I -- I don't want
7 to argue with you. I asked the basis for that.
8 And it was apparent to me he didn't understand
9 my question. So I'm trying it again.

10 MR. PETTINGELL: Repeat your answer.

11 Q. Well, don't repeat your answer. Please answer
12 the question. If it's a different answer, then
13 give a different answer. If it's the same,
14 give the same.

15 A. The same answer I gave before.

16 Q. And that is?

17 A. Can you read it back to me?

18 (Question read back.)

19 A. I would say no.

20 Q. Okay. If Endorsement 3 had never issued and
21 was not a part of the policy -- I'm changing
22 things; okay -- would there have been coverage
23 under Policy No. 3, marked as Exhibit 7, for
24 what has been termed as crew P&I cover?

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1 Q. And Endorsement No. 3, I take it, puts into
2 effect what you understood Mr. Russo told you
3 he wanted in the October telephone conversation
4 that you had?

5 A. That's correct.

6 Q. All right. Before that conversation took
7 place, before Endorsement No. 3 went into
8 effect -- and it went into effect, by its
9 terms, on August 13th at the beginning of the
10 policy period -- the balance of the policy
11 contained the original policy terms and
12 provisions of the -- of the policy. Right?

13 A. Yes.

14 Q. And under the policy terms as written before
15 the effective date of Endorsement No. 3, was
16 there coverage under the policy for what we
17 have been terming crew P&I coverage?

18 MR. LANGER: Objection. Seeks a legal
19 conclusion. Go ahead. The do -- I mean, the
20 document speaks for itself. If you're asking
21 him for --

22 MR. PETTINGELL: Well, I'm asking him for
23 his opinion, his understanding.

24 MR. LANGER: He's -- he's told you it

1 MR. LANGER: Objection. Calls for a legal
2 conclusion. The document speaks for itself.

3 A. I would say no.

4 Q. And why is that?

5 A. Because we gave Matt Russo a return premium
6 from May until policy issue at August on his
7 asking for it. So, therefore, this policy
8 wouldn't be the same.

9 Q. Okay. You're saying, by virtue of your
10 returning the premium, that was reflective of a
11 change in coverage as stated in Endorsement No. 3
12 to Exhibit 7?

13 MR. LANGER: Objection to the form of the
14 question.

15 A. It would be prior to Endorsement 3, I believe,
16 the way you're talking about --

17 Q. Okay.

18 A. -- and by virtue of his asking us.

19 Q. All right. That's fair. How about if he
20 hadn't asked you and you didn't return a
21 premium, would there have been crew P&I cover
22 under the policy?

23 A. Yes.

24 Q. And there would have been coverage -- rather

than have you flip through the pages because they're not numbered -- there would have been crew cover for how many crew?

A. Three to four men.

Q. And it would have included -- well, doesn't it say a little more?

A. It says "excluding Owners."

Q. And since we've established that Mr. Russo was not an owner, if Mr. Russo was part of that crew, assuming Endorsement 3 had not issued, there would have been coverage for him under this policy as well?

MR. LANGER: Objection. Seeks a legal conclusion.

A. That's -- that's correct.

Q. Now, in Exhibit 7, Endorsement No. 3 was issued. And Endorsement No. 3 states, "In consideration of a return premium of" -- a stated amount -- "the Mary & Josephine is covered for Port Risk only-no fishing effective August 13 to December 21, 2003." Do you agree?

A. Yes.

Q. Would you find the place in Exhibit 7 in Policy No. 3 where it states that there is no crew

anybody on behalf of Mary & Josephine Corporation to the effect of a position on behalf of OMI or Sunderland or M/S that when a vessel is on port risk coverage, there is no crew P&I coverage?

A. No.

MR. ABRONOVITZ: Thank you. That's all I have.

MR. LANGER: I have a couple of questions.

CROSS-EXAMINATION

BY MR. LANGER:

Q. Mr. McVey, was your conversation with Mr. Russo on October 3rd of 2003 the first time he talked to you about putting the boat on port risk for what Mr. Pettingell has called Policy Year No. 3?

A. I believe so.

Q. And, in fact, he asked you to put it on port risk retroactive, in fact, back into part of Policy Year No. 2?

A. That's correct.

Q. And you carried out his wishes by passing that information along to Ms. Houder?

A. That's correct.

coverage?

MR. LANGER: While it's on port risk, you mean?

MR. PETTINGELL: Yes.

MR. LANGER: Is there anything in the policy that says that if it's on port risk, there's no crew coverage?

A. I don't believe so. But I -- I don't think it says anything in here regarding that.

MR. PETTINGELL: Thank you. All right. I have nothing further.

MR. ABRONOVITZ: Just a couple of other questions.

RECROSS-EXAMINATION

BY MR. ABRONOVITZ:

Q. You indicated that Mr. Ostrow was the former president of your company?

A. Yes.

Q. Where is he now?

A. Mr. Ostrow passed away.

Q. When did he pass away?

A. April.

Q. Did you -- I'm sorry. I wasn't aware of that. Have you ever seen anything from Mr. Ostrow to

Q. And you believe that, at some point either on or shortly after October 3rd of 2003, Mr. Russo called Ms. Houder?

A. I'm pretty sure he called her.

Q. When you talked to Mr. Russo on October 3rd, around October 3rd, did he tell you that he would -- would be working on his boat or the Mary & Josephine, doing recommendations provided by a surveyor?

A. No.

Q. Were you aware at any time prior to hearing of Mr. Russo's accident that there were any surveyor recommendations that had to be completed on the Mary & Josephine?

A. I wasn't aware of any.

Q. Who -- who makes decisions regarding whether a particular claim is covered by the policy?

A. I would say, the insurance companies, the underwriters.

Q. You -- you don't make that decision?

A. No.

Q. Just so we're clear, I think you testified -- I just want to be clear, I'm referring to Exhibit No. 6 -- the reference to the crew complement